

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7457-E, 7464-E, 7467-E, 7635-E
)	
Petition for Determination of Effective)	
Competition in various Michigan Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: April 23, 2008

Released: April 24, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to

⁶47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition at 3.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition at 4.

¹²*See* Petition at 4-5.

¹³*See* Petition at 2-3.

¹⁴*Id.* at 5-6. In the Communities of Charleston (CSR 7464-E), Howell (CSR 7467-E), Saline Township and Sylvan (CSR 7635-E) both the Comcast penetration figure and the aggregate DBS penetration figure clearly exceed 15 percent. Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding

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determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code and zip code plus four basis where necessary.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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15 percent of the occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

¹⁵Petition at 6-7.

¹⁶Petition at 7-8.

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR(s) 7457-E, 7464-E, 7467-E, 7635-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)
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CSR 7457-E

Brighton City	MI0355
Brighton Township	MI0207
Genoa	MI0244
Green Oak	MI0141
Howell	MI0142
Oceola	MI0420

CSR 7464-E

Augusta	MI0767
Barry	MI0891
Charleston	MI0790
Comstock	MI0787
Galesburg	MI0768
Prairieville	MI0890
Richland Township	MI0769
Richland Village	MI0770
Ross	MI0771

CSR 7467-E

Hartland	MI1758
Howell	MI1790

CSR 7635-E

Chelsea	MI0502
Clinton	MI0501
Dexter	MI0500
Dundee	MI0504
Lima	MI1741
Lodi	MI1006
Manchester	MI0499
Milan	MI0503
Saline	MI0498
Saline Township	MI1740
Sylvan	MI1431
Webster	MI1387
Ypsilanti	MI0334
Ypsilanti Township	MI0422

ATTACHMENT B

CSR(s) 7457-E, 7464-E, 7467-E, 7635-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
<u>CSR 7457-E</u>				
Brighton City	MI0355	16.85%	3,103	523
Brighton Township	MI0207	21.21%	5,950	1,262
Genoa	MI0244	26.88%	5,839	1,570
Howell	MI0142	38.03%	3,857	1,467
Oceola	MI0420	50.40%	2,756	1,389
<u>CSR 7464-E</u>				
Augusta	MI0767	56.52%	368	208
Charleston	MI0790	43.74%	679	297
Galesburg	MI0768	43.00%	765	329
Richland Township	MI0769	31.24%	2,394	748
Richland Village	MI0770	31.39%	258	81
Ross	MI0771	38.65%	2,031	785
<u>CSR 7467-E</u>				
Hartland	MI1758	42.15%	3,696	1,558
Howell	MI1790	61.72%	1,902	1,174
<u>CSR 7635-E</u>				
Chelsea	MI0502	41.52%	1,840	764
Clinton	MI0501	40.21%	925	372
Dexter	MI0500	38.49%	1,013	390
Dundee	MI0504	32.97%	1,389	458
Lodi	MI1006	23.11%	1,960	453
Manchester	MI0499	64.78%	900	583
Milan	MI0503	43.73%	1,923	841

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
Saline City	MI0498	28.33%	3,148	892
Saline Township	MI1740	30.90%	460	142
Sylvan Township	MI1431	16.48%	2,500	412
Ypsilanti City	MI0334	15.60%	8,551	1,334
Ypsilanti Township	MI0422	15.27%	20,194	3,084

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR(s) 7457-E, 7464-E, 7635-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
<u>CSR 7457-E</u> Green Oak	MI0141	5,438	786	14.45%
<u>CSR 7464-E</u> Barry	MI0891	1,265	41	3.24%
Comstock	MI0787	5,366	190	3.54%
Prairieville	MI0890	1,223	49	4.01%
<u>CSR 7635-E</u> Lima	MI1741	1,168	163	13.96%
Saline Township	MI1740	460	115	25.00%
Sylvan	MI1431	2,500	376	15.04%
Webster	MI1387	1,774	246	13.87%